

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

UNITED STATES OF AMERICA)	
)	
VS.)	CASE NO.: 4:19-CR-00069-3
)	
CRAIG GERMAN)	
Defendant.)	

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW CRAIG GERMAN, Defendant in the above-styled case, by and through his undersigned counsel, and files this Sentencing Memorandum to be considered by this Honorable Court in conjunction with his Presentence Report, and the arguments and evidence to be put forth at his sentencing. Mr. German asks that this information be used to fashion a sentence which comports with the requirements of 18 U.S.C. § 3553(a) and is otherwise reasonable. In support of such a sentence, Mr. German shows this Honorable Court the following:

The Offense:

On September 12, 2019, Mr. German appeared before this Honorable Court and plead guilty to Count I of the Indictment against him, Conspiracy to Steal Trade Secrets, pursuant to 18 U.S.C § 1832(a)(5).

The Sentencing Guidelines:

The probation officer in this case has submitted a Presentence Investigation Report (PSR) and sentencing recommendation. The PSR recommends a total sentence of 70 months imprisonment, a term of supervised release of 3 years, a \$2,000 fine, and a \$100 special assessment. The base offense level, pursuant to §2B1.1 of the Sentencing Guidelines, which governs the offense conduct is 6.

Pursuant to §2B1.1, the probation officer applied an enhancement to Mr. German's guidelines calculation by applying the loss table at §2B1.1(b)(1)(L). The government and the Defendant in this case

have stipulated to an intended loss amount of between \$25 million and \$65 million, yielding an enhancement due to the intended loss of an additional twenty two (22) points.

The offense level has been further enhanced due to Mr. German's role in the offense, as having been placed in a position of trust pursuant to §3B1.3, specifically for having "abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense..." See, *PSR* at 8. The above adjustments and base offense level yield an adjusted offense level of 30.

The defendant was given a three level decrease for acceptance of responsibility pursuant to §3E1.1(a) and (b), for both having demonstrated acceptance of responsibility and for having assisted authorities in the investigation or prosecution of his own misconduct by notifying authorities of his intention to enter a guilty plea, respectively. This yields a total offense level of 27.

Finally, Mr. German's criminal history reflects one federal misdemeanor, impersonating a federal officer (Case No. 06CR2356-H). This offense was not factored into Mr. German's criminal history calculation because it was a misdemeanor and did not fall within the time period by §4A1.2, therefore Mr. German's criminal history score is zero (0).

Mr. German's guidelines range is 70-87 months of incarceration, the probation officer in this case has recommended a sentence of 70 months of incarceration.

Recent Stipulation of the Parties Pursuant to §2B1.1

Mr. German timely filed his objections to the Presentence Investigation Report through counsel on December 4th, 2019. His specific contentions related to the probation officer's calculations of monetary loss, specifically intended loss, suffered by the victim companies in this case, Gulfstream and HondaJet.

Both parties have reached a stipulation related to the intended loss amount in this case and Mr. German considers his previous objections resolved for purposes of sentencing. The within stipulation relates only to Mr. German's case and does not have bearing upon any of the co-defendants' cases. The stipulation sets the agreed upon range of intended loss at more than \$25 million but less than \$65 million. The stipulation has been incorporated into the probation officer's sentencing recommendation in the *PSR*.

18 U.S.C. §3553

The Court must fashion a reasonable sentence pursuant to 18 U.S.C. §3553. This may require the Court to deviate from, depart from, reject or ignore the guidelines sentencing range. *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005).

In *United States v. Marcus Williams*, the defendant was sentenced as a career offender with a guidelines range of 188-235 months. 435 F.3d 1350 (11th Cir. 2006). The District Court considered the relevant factors under 18 U.S.C. §3553 and sentenced the defendant to 90 months. The government appealed, but the Eleventh Circuit affirmed the finding that the District Court's sentence was not based upon an improper departure from the Guideline range but was entered after an appropriate consideration of the factors enumerated in 18 U.S.C. §3553.

Applying the requirements of 18 U.S.C. § 3553, the Court must consider the circumstances of the offense and the characteristics of the Defendant. To that end, Mr. German's general background, including his age, health, and familial situation are particularly relevant towards the Court's determination of a proper sentence in this matter. Mr. German was just recently married to his wife, Ekaterina German, on June 26, 2019. Mrs. German and her eleven year old daughter, Alena Novikova, moved to the United States to live with Mr. German and reside together in North Carolina. The two are dependent on Mr. German for their livelihood and have just begun their relationship in the United States, although both Mr. and Mrs. German began their relationship in earnest approximately three (3) years prior.

Mr. German is sixty (60) years old, and is recently retired from HondaJet as a cost analyst. His advanced age and his less than optimal health make the prospect of his spending significant time in prison more devastating to him, especially considering that Mr. German has never spent any time in custody, than it would a younger man in optimal health. Mr. German suffers from chronic kidney stones, which are excruciatingly painful and debilitating. This particular condition keeps him from being able to stand or walk for upwards of three weeks at a time.

Mr. German also suffers from sleep apnea which requires his daily use of a Continuous Positive Airway Pressure machine (CPAP). Without proper equipment and medical care relating to this particular condition, Mr. German could suffer dire health consequences.

In addition to the above-described medical issues, Mr. German also suffers from gout. His conditions require him to follow a strict vegetarian diet, which must be observed on a constant basis. Mr. German asks the Court to consider these issues particularly in formulating its sentence.

Mr. German makes no claim that he has not violated the law and further is well-aware of the fact that he must serve time in prison due to his conduct. Indeed, this is without exception, the biggest mistake that Mr. German has made in his entire life. Mr. German is ashamed of his conduct and this Court will hear directly from him exactly how ashamed he is of his conduct. Mr. German has maintained all along that he made the decision to withdraw from the conspiracy in this case in April of 2018 after an extremely painful bout of chronic kidney stone pain. It was in October of 2018 that he ultimately made the decision to anonymously contact the Gulfstream/General Dynamics ethics hotline to inform them of his co-conspirators' designs on continuing the conspiracy.

Mr. German additionally proffered, against his own interest and at the risk of incriminating himself. In two separate proffer sessions, Mr. German divulged information that to the best of his knowledge, would assist the government in their prosecution of the remaining co-defendants in this matter. Although Mr. German did not receive a 5K motion as a result of his proffer sessions, Mr. German remains willing, pursuant to the proffer agreement, to assist the government in their prosecution(s) of the co-defendants in this case should his testimony be required.

It should further be noted that Mr. German did make his intent to enter a guilty plea in this case, practically at the outset of this matter. He resoundingly offers his acceptance of responsibility as reflected by the PSR in this case and maintains his acceptance of responsibility as he stands before the Court.

Mr. German's new family is acutely aware of how this will affect, not only Mr. German, but his new wife and stepdaughter. They are aware that they will be without his support and company for a significant amount of time, regardless of how much time in prison this Court imposes as a sentence. They would ask that whatever sentence is imposed, for the Court to consider their well-being and support in formulating a sentence. His wife, Ekaterina German, has written the Court a letter explaining her financial and emotional dependence on her husband. That letter is attached hereto as Exhibit "A".

Mr. German's extended family has also reached out to the Court by way of character letters. His

son, Stephen German, his twin brother Gary German, and his nephew, Keni German, have all provided letters attesting to Mr. German's good character which are attached hereto as Exhibit "B".

To that end, the Defendant posits that due to his cooperation in this investigation and in his own prosecution, a downward departure is appropriate in his case and asks that the Court mercifully impose a sentence of fifty (50) months of incarceration. Mr. German is in a state of poor health and the submits that any sentence will be devastating to him and to his family. This is not to say that Mr. German is not incredibly remorseful for what he has done, indeed he is. Mr. German nevertheless asks this Court for mercy and incorporates all of the mitigating factors in this Memorandum in asking for a downward departure, as is allowed for by law.

Mr. German further asks that this Court consider recommending that he be allowed to serve his time close to his family in Kernersville, North Carolina. The closest federal facility to his family is FCI Butner Low, a low-security camp in Butner, North Carolina. This facility also abuts Federal Medical Facility Butner, which serves the FCI Butner facilities and the federal government generally in that area. The combination of a low-security facility and a medical center would provide Mr. German with access to medical care, of which he will most likely need during any term of incarceration that the Court imposes.

Mr. German also requests that he be allowed to self-surrender. In support of this request, he submits that he has complied with each and every requirement of his pretrial release and that he has cooperated from the very outset of this matter. Mr. German is in the process of selling his home, in anticipation of incarceration, and is also in the process of converting assets to ensure that his wife and stepdaughter are provided for while he is incarcerated. Self-surrender will provide him with the flexibility to ensure that his dependents are in the best possible financial situation prior to any term of incarceration.

WHEREFORE, the Defendant, Craig German prays that this Court impose a sentence of fifty (50) months of incarceration which comports with fair sentencing practices as called for by §3553 and additionally recommend to the Bureau of Prisons that he be placed at FCI Butner Low.

Respectfully submitted,

/s/ Lynne M. Fleming
LYNNE M. FLEMING
Attorney for the Defendant
Georgia State Bar No. 803793

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EXHIBIT A

EXHIBIT A

6 February 2020

Honorable William T. Moore, Jr.
United States District Court
Southern District of Georgia
125 Bull Street
Savannah, GA 31401

Dear Judge Moore:

My name is Ekaterina and I am the wife of Craig German. I am from Russia. We met him in 2016 and in the process of communication, I realized that Craig is a good person, kind, well-mannered, smart and educated, and I loved him. We decided to start a family and in June 2019, I came to the United States with my 11 year old daughter on a bride's visa. He is a wonderful family man, a caring husband and father. I treasure and admire him.

I did not know about the situation, I understand why Craig was ashamed to admit that he had made this terrible mistake and was afraid to tell me about it and hurt us. I know what he was worried about. I see that he really repents and regrets. I am also very worried, do not sleep for several days and I'm very sorry.

For me and my daughter Craig, there is great support and reliance, and we simply cannot live without him. It is very difficult for me in a new country, especially with a child. I received a green card only a week ago and I don't have a job yet, my daughter and I are still studying English. We are forced to sell the house (it is in the mortgage) that we live in and I can't even imagine where we will live, where and how we will move.

I am just in despair and beg to be lenient to his punishment, and I also ask you to postpone the sentence so that we can put our financial affairs in order.

Sincerely,

Ekaterina German

Ekaterina German

EXHIBIT B

EXHIBIT B

Honorable William T. Moore, Jr.

United States District Court

Southern District of Georgia

125 Bull Street

Savannah, GA 31401

Dear Judge Moore,

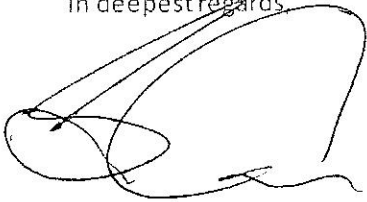
My name is Stephen German. I am the son of Craig German. I am writing this letter in plea for a lower sentencing for Craig German. In this instance I am unfortunately not knowledgeable or aware of how these acts that has led him to be in this position. But I believe that in fact that he did not have any malicious or ill intent due to his reputation in this industry nor him as a parent figure.

Craig German has been in the aerospace industry for many decades. He has put a lot of sweat and tears into objects to protect our country from threats to our home. He has made travel safer. And he has increased profitability to the majority of most aerospace companies. I am a firm believer all acts were not intended malicious against the US Government nor the aerospace company in question. He sought after creating a safer, faster way of travel. This was intended on being a change in the way we fly. This was going to allow, you yourself a faster, safer flight.

The work he has produced over the many decades in this industry show his integrity and his fortitude. He is well respected and admired amongst his colleagues and his fellow workers. Companies know him as the "guy to go to" if they need to save money due to his knowledge and reputation amongst vendors. He has created a name for himself and unfortunately with publicity has taken a hit.

I finalize in saying, please act lenient in his sentencing as I believe he still has great work to do. His reputation as a cost analyst engineer has taken enough of the punishment for all. When judging against his case please understand that his reputation and name was enough for the court. At your grace. I wish I understood the predicament of the US Government, but I hope you would allow him to put his life back together again. And allow him to fight to be the great again and prove himself to companies.

In deepest regards,

A handwritten signature in black ink, appearing to read 'Stephen German', with a large, stylized loop at the end.

Stephen German

General Manager - Aarons Sales and Lease

February 6, 2020

Honorable William T. Moore, Jr.
United States District Court
Southern District of Georgia
125 Bull Street
Savannah, GA 31401

Dear Judge Moore,

My name is Gary German and I am the twin brother of Craig German. We were adopted at 3 months by two wonderful people from the WW2 era. My dad and mother, Arnold and Norma German were such great folks in both of our eyes. He was a Navy Lieutenant Commander serving in WW2, Korea, and Viet Nam before retiring in 1974.

My Brother and I both went Oklahoma State University where he got degrees in Mechanical Design and Manufacturing Technology and me in Marketing. He has always been the smart one. But always needs my help in making hard decisions here and there. He has always been there for me and me for him, no matter if it was Divorce or with kid's Birthdays and Christmas.

He has always helped me PRO BONO, with the startup of my company called STAR GUIDE. He has always been there for me and has never said no to anything from borrowing money to helping me with editing my Patents for review before I sent them to the US Patent Office. I hold 9 of them in the entertainment, technology and Travel Spaces.

My Kids love him with all their hearts. We have not seen much of each other because he resides in North Carolina and me in Orlando, Florida. We do however, keep in touch almost every other day.

He is dedicated, trustworthy and very dependable. He helps anyone from his neighbors (he cleared trees from their yards after the last hurricane) to his family whenever they ask and even when they do not ask.


When he was participating with APAC, the anti-ice solutions company, their technology was presented to HondaJet and Gulfstream where both companies, said no to the potential investment. He made a suggestion to go and present the company's technology to Boeing and to Airbus. Commercial Airline Companies seemed to be where this technology needed to be, not with HondaJet or Gulfstream whose sale quantities would not produce a viable return on their investment and subsequently not make any financial sense due to the risks involved with the possibility that the FAA may not certify this system on any of these two company's airplanes. It would have been too risky of a venture and that is what he has told me on numerous conversations which made perfect sense to me.

My brother is someone you would want on your side of everything! He does not smoke, do drugs, rarely cusses, and leads by example. He lends me money when I need it. He saves money and he currently has a 401K with Honda, the parent company of HondaJet and is a pension holder with General Dynamics, the parent company of Gulfstream.

I know for a fact that he was the whistleblower on this case. I know that he pleaded guilty and I know that he knows that what he did was wrong. He has never denied it and I fully believe that he has taken full responsibility for his mistakes.

I hope there is something he can do without having to spend time in jail as his kindness and morals will be missed by myself, my family, and I am sure his new family also.

Kind regards,



Gary German
Twin Brother of Craig German

February 6, 2020

Honorable William T. Moore, Jr.
United States District Court
Southern District of Georgia
125 Bull Street
Savannah, GA 31401

Dear Judge Moore,

My name is Keni German, I am 17 years old, and I am Craig German's Nephew. The Son of Gary German, the twin brother of Craig German.

Uncle Craig, is a good man, a cool uncle. Always there for us, from birthdays to Christmas'. He always invites my sister and me to fly up to his house in North Carolina for summer break. We both go ATV riding for the two weeks we are there. I like going there because it is a way to relax and to do things we normally don't get to do in Florida. Plus, Uncle Craig is a better cook than my Dad.

My dad is always doing things for us like buying our first cars, taking us Disney World and paying for our braces. Sometimes he needs to barrow money from my uncle. My dad always pays him back. Uncle Craig, is always there if we need him.

On top of all that said, he is pretty cool with his knowledge of cars. I respect him as an uncle and it's pretty cool that I get to see my dad and him having such a cool time together. He is always on the phone with my Dad when its football season. I never see anyone else's families have so many conversations during the week. They really like talking-a lot. I just kind of roll my eyes at them. At least on the weekends, I can always depend on him talking to my sister and I about how our week went.

Sincerely yours,

Keni German
Ken German
Craig German's Nephew

CERTIFICATE OF SERVICE

This is to certify that I have on this date served counsel for all parties to the foregoing matter in accordance with the notice of electronic filing ("NEF"), which was generated as a result of electronic filing in the Court.

This 5th day of February, 2020

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Savannah, GA 31401
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Flemingesq@yahoo.com

/s/ Lynne M. Fleming
LYNNE M. FLEMING
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